Supreme Court, U.S.
FILED
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No. ____

In the Supreme Court of the United States

KESAR SINGH,

Petitioner,

v.

JOHN ASHCROFT, ATTORNEY GENERAL,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. May the Court of Appeals deny an asylum claim by finding changed country conditions when no such finding was made by the agency below?

II. Where a refugee has been persecuted by the government of his own country, may the Court of Appeals hold that he can safely relocate within his home country?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS AND ORDERS BELOW 1

JURISDICTION 1

STATUTORY AND REGULATORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 4

FACTS 4

REASONS FOR GRANTING THE PETITION 9

ARGUMENT 9

a. This court should reverse a finding in the first instance by the court of appeals of "changed country conditions," because such findings contravene this court's previous decisions 9

b. The court of appeals erred in concluding that Singh can safely relocate within India because the source of persecution is the government 11

i. INS Did Not Rebut the Presumption of Nationwide Persecution of Mr. Singh by the Indian Government 12

ii. It is Unreasonable for Singh to Relocate Within India Because He Would Still be Subject to Persecution by the Government . . 14

CONCLUSION 16

APPENDICES

Appendix A

Order of the United States Court of Appeals for the Ninth Circuit Denying Rehearing, Dated: August 26, 2004 . . . . . 1a

Appendix B

Decision of the United States Court of Appeals for the Ninth Circuit Dated: June 18, 2004 . . . . 3a

Appendix C

Decision and Order of the Board of Immigration Appeals Dated: December 19, 2002 . . . . . 6a

Appendix D

Oral Decision of the Immigration Judge. Dated: June 15, 2001 . . . . . 7a

TABLE OF AUTHORITIES

Cases

Damaize-Job v. INS, 787 F.2d 1332 (9th Cir. 1986) . . . 12

Garcia-Martinez v. Ashcroft,
371 F.3d 1066 (9th Cir. 2004) 11

Gonzalez-Hernandez v. Ashcroft, 336 F.3d 995,
1000 (9th Cir. 2003) 11

Melkonian v. Ashcroft, 320 F.3d 1061 (9th Cir. 2003) 11, 14

INS v. Ventura, 537 U.S. 12; 123 S.Ct. 353,
154 L.Ed. 2d 272 (2002) 9, 10, 11

Singh v. Ilchert, 801 F. Supp. 313 (N.D. Cal. 1992) . . 13

Singh v. Moschorak, 53 F.3d 1031 (1995) 13, 14

Harpinder Singh v. Ilchert, 63 F.3d 1501
(9th Cir. 1995) 12

Surinder Singh v. Ilchert, 69 F.3d 375 (9th Cir. 1995) 11, 12

Statutes

8 U.S.C. 1101(a)(42)(A) 2
8 U.S.C. 1158(b)(1) 2
28 U.S.C. 1254(1) 1

Regulations

8 C.F.R. 208.13(b)(1) 2, 3, 12

OPINIONS AND ORDERS BELOW

The Ninth Circuit Court of Appeals entered its decision on June 18, 2004, under the caption *Singh v. Ashcroft*, No. 03-70215 (9th Cir. 2004) (unpublished). The decision is attached hereto as Appendix A.

Petitioner Singh filed a timely petition for rehearing, with suggestion for rehearing en banc, which was denied on August 26, 2004. The Order is attached hereto as Appendix B.

The Board of Immigration Appeals affirmed the decision of the immigration judge without opinion. The Board's decision is attached hereto as Appendix C.

The immigration judge's oral decision is reprinted as Appendix D.

JURISDICTION

The Ninth Circuit filed its decision on June 18, 2004, and denied the petition for rehearing on August 26, 2004. The Ninth Circuit had jurisdiction over this matter pursuant to 8 U.S.C. § 1252.

This petition for writ of certiorari has been filed and docketed within the time limits prescribed, as it was mailed on November 22, 2004, which is within 90 days of the denial of the petition for rehearing.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

8 U.S.C. §1158(b)(1)

"The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title."

8 U.S.C. §1101(a)(42)(A)

"The term 'refugee' means

> "(A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...."

8 C.F.R. § 208.13(b)(1)

"(b) Eligibility. The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution.

> "(1) Past persecution. An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the

protection of, that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. That presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.

"(i) Discretionary referral or denial. Except as provided in paragraph (b)(1)(iii) of this section, an asylum officer shall, in the exercise of his or her discretion, refer or deny, or an immigration judge, in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

"(A) There has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; or

"(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so."

STATEMENT OF THE CASE

FACTS

Kesar Singh is now 31 years old. He is a Sikh from the Punjab state of India. He fled India after torture and threats at the hands of the police. In 1999 he entered the U.S. without inspection near Brownsville, Texas. C.A.R. pp.303-310.

As a student in the Punjab, Kesar Singh was an activist for "Babbar Khalsa International," a Sikh religious party. He joined the party in 1992 and was student president in college. As a student leader he preached about the Sikh religion, educated people about his religion and promoted his religion. C.A.R. pp.24, 57-58, 306-308.

In November 1994 Kesar Singh was arrested after giving a speech promoting the Sikh religion. He two other students were kept in a cell at the police station overnight. C.A.R. pp.58-59. The police interrogated the three students about their work, and beat them with a long leather strap with a handle. The police asked Singh for a list of Babbar Khalsa members. One of a pair of officers questioned Singh while the other pulled Singh's long hair and braced his leg in Singh's back. C.A.R. pp.58-60. The beating lasted for 35 to 40 minutes. C.A.R. pp.60-61. In the morning the police were ready to start beating Singh again, but students closed the college down and rallied on Singh's behalf at the police station. The District Commissioner and other officers came to the scene. The college's principal and dean spoke and obtained Singh's release. C.A.R. pp.61-62.

In November or December 1995, a few months after he graduated from college, the police arrested Singh at home without giving any reason for the arrest. C.A.R. pp.62-63. He

was detained in a cell alone. C.A.R. p.64. He knew that the police were and detaining and killing Sikhs, so he denied any membership. C.A.R. pp.64-65. At that time they were picking up Sikhs without reason, staging false encounters, and killing them. C.A.R. p.95. The police tied Singh's hands behind his back. One policeman pulled Singh's hair, while two spread his legs, and interrogated him about his organization and its members and about who in the organization had weapons. C.A.R. p.67.

In the middle of the night they blindfolded Singh and took him and two other men to a forest. C.A.R. p.70. The police told the three men to run. The police had started firing at the running men with rifles. Because the police had been pulling Singh's legs, his legs hurt did not function well, and Singh fell into a ditch after running about 75 feet. C.A.R. pp.71-76.

Singh crawled toward some trees and escaped. He heard screams during the shooting, but he could not tell what happened to the other prisoners. At that moment he was hoping only to save his own life; he did not look back. C.A.R. p.77.

After about four hours he came to a village that he recognized. C.A.R. p.78. He stopped on the road and hitched a ride to a place near his home. C.A.R. pp.78-79.

When Singh reached home, his parents and sibs consulted and decided to send him somewhere safer. He took a bus to Delhi. C.A.R. pp.79-80.

In Delhi the next day Singh saw a story in a Punjabi newspaper about police killing terrorists in a forest near Karawa. The article said that the police had an encounter with terrorists, and that two were killed and one escaped. Though

no names were mentioned in the article, Singh believes this reference was to him. C.A.R. p.80.

The practice of fake encounters with alleged militants is corroborated in the State Department's *Country Report on Human Rights Practices* for India in the years 2000 and 1998. C.A.R. pp.81, 156.

Singh then left Delhi and went to live in Gujarat. C.A.R. p.81. Singh worked in a factory and stayed in Gujarat for four years.

In 1999, four policemen came to Singh's home in Gujarat, two with the symbol "PP" (Punjabi Police) on their uniforms and two with the uniforms of Gujarat. C.A.R. pp.82, 98, 101. Though Singh did not see the policemen, their visit was a topic of conversation among his neighbors, who described the police and their Punjab uniforms to Singh when he arrived home. The neighbors told Singh that the police had been looking for him. C.A.R. p.82.

Singh then called his parents' home in the Punjab. The family said the police also had come there looking for him, and asking where he was living. C.A.R. p.83. His brother warned Singh that his life was in danger.

Singh borrowed money from family and friend and arranged to travel to Costa Rica with the help of a travel agent. He stayed in Costa Rica for two months. C.A.R. pp.83-84. Then he traveled through Central America and Mexico to Texas. C.A.R. pp.86-88.

Singh was not politically active in Gujarat, where there were no Sikhs and no Babbar Khalsa organization, but he kept in contact with his friends in the Babbar Khalsa by telephone

C.A.R. p.103. Singh believes that the Gujarat police suspected him of terrorism. Singh thinks the police tried to kill him because they regard all Sikhs as terrorists. He believes that the police get promotions for killing alleged "terrorists," and so, because his name has been prominent in the past, they would be motivated to kill him if they found him. C.A.R. pp.94, 104. Singh also thinks that the Sikhs are suspected of trying to convert the Hindus. C.A.R. p.92.

At the time of his asylum merits hearing in March 2001, the police were still coming to his parents' home in the Punjab asking for Singh. C.A.R. p.95. The police also in Gujarat have Singh's name, so if he comes to their attention they may kill him. C.A.R. p.97.

Singh is still a nominal member of the Babbar Khalsa organization, but it is too dangerous to keep paperwork proving membership in the organization C.A.R. p.99. Sikhs are still being killed in false encounters, but less so than before C.A.R. p.105.

Singh's father has been harassed and asked Singh's whereabouts. Singh's father has declared that Singh is no longer in India. Singh thinks that his life would be in danger because his name was prominent in the past. C.A.R. p.104.

The immigration judge had some doubts about Kesar Singh's credibility, but did not decide the case strictly on credibility grounds:

> "I believe that if the police has really wanted to kill them, they sure could have just shot them while they were blindfolded.... So I do not agree with the description of that event as the respondent has described it. [¶] Assuming for the balance of the

discussion that the claim is true, then the question remains whether or not the respondent has made a claim for asylum and withholding...."

C.A.R. p.27.

The immigration judge then went on to say that it was uncertain why the Punjab Police came looking for Singh in Gujarat, four years after his last arrest in Punjab. C.A.R. p.29. This visit, in which the police had not found Singh, prompted Singh to flee India. The immigration judge was mistaken in several crucial facts in this analysis, and the defects of the analysis were addressed in Singh's briefs to the Board and to the Ninth Circuit. However the immigratin judge's decision did not find that changed country conditions would make it safe for someone who had suffered the traumatic experiences that Singh had described. In fact the IJ conceded a continuing human rights problem, "The reports are clear that the police act without regard to the liberty of many of their targets." C.A.R. p.28.

The Board affirmed the immigration judge's decision without opinion.

The immigration judge's decision was addressed on its merits in briefing to the Court of Appeals. The Court, however, found that documents in the record, which indicate changed country conditions in India, provided substantial evidence for the immigration judge's decision.

REASONS FOR GRANTING THE PETITION

The Board of Immigration Appeals affirmed without opinion the immigration judge's denial of asylum. The grounds of the immigration judge's decision, which did not rest on any finding of changed country conditions in India, were addressed in briefing to the Court of Appeals. The Court, however, found that documents in the record indicate changed country conditions in India and thus provided substantial evidence for the immigration judge's decision.

It is improper for the courts of appeals to make such factual findings in the first instance.

Both the immigration judge and the court of appeals erred in finding that a victim of persecution at the hands of the government of the home country can safely relocate within the home country.

ARGUMENT

a. This court should reverse a finding in the first instance by the court of appeals of "changed country conditions," because such findings contravene this court's previous decisions

For Singh, neither the Immigration judge or the BIA considered changed country conditions, despite the arguments made by counsel at the removal hearing. This deprives Singh of an agency determination of that issue, in direct conflict with *INS v. Ventura*, 537 U.S. 12; 123 S.Ct. 353, 154 L.Ed. 2d 272 (2002) (reversing 264 F.3d 1150 (9th Cir. 2001).

In *Ventura*, the Immigration judge had found changed country conditions in Guatemala, Mr. Ventura's native country, but the BIA did not address the issue. Both sides requested the Ninth Circuit to remand the case to the BIA on the issue of changed country conditions. The Court of Appeals decided the issue itself, without remand. The Supreme Court then said:

> "Generally speaking, a court of appeals should remand a case to an agency for decision of a matter that statutes place primarily in agency hands.... The agency can bring its expertise to bear upon the matter; it can evaluate the evidence; it can make an initial determination; and, in doing so, it can through informed discussion and analysis, help a court later determine whether its decision exceeds the leeway that the law provides.
>
> "These basic considerations indicate that the Court of Appeals committed a clear error here. It seriously disregarded the agency's legally-mandated role."

Ventura, 537 U.S. at 16-17, 123 S.Ct. at 355-56, 154 L.Ed. 2d at 277.

> "[R]emand could lead to the presentation of further evidence of current circumstances in Guatemala — evidence that may well prove enlightening given the five years that have elapsed since the report was written."

Ventura, 537 U.S. at 18, 123 S.Ct. at 356, 154 L.Ed. 2d at 278.

The Ninth Circuit itself has recognized that "the agency, not the court of appeals, must construe the country report and determine if country conditions have changed such that the applicant no longer has a well-founded fear of persecution"). *Gonzalez-Hernandez v. Ashcroft*, 336 F.3d 995, 1000 (9th Cir., 2003); *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066 (9th Cir. 06/14/2004).

The panel's finding of substantial evidence also relied on irrelevant evidence. A State Department opinion, "that many Sikhs who live outside Punjab do not suffer governmental persecution.... [is] irrelevant in cases where individuals have experienced actual persecution by the government. *Singh v. Ilchert*, 69 F.3d 375 (9th Cir.) quoting *Singh v. Ilchert*, 63 F.3d 1501, 1511-1512.

b. The court of appeals erred in concluding that Singh can safely relocate within India because the source of persecution is the government

The holding that Singh could safely relocate in Gujarat was based on the court's finding of improved country conditions in India. The Immigration judge had made no such finding. This is in direct conflict with *INS v. Ventura*, 537 U.S. 12 (2002); *Gonzalez-Hernandez v. Ashcroft*, 336 F.3d 995 (9th Cir. 2003). The Board or (immigration judge) has to make its own finding first on the question of changed country conditions and the feasibility of relocation within the applicant's home country. *Ventura*, 537 U.S. at 18.

If the source of persecution is the government, a rebuttable presumption arises that the threat exists nationwide, and that internal relocation would be unreasonable. *Melkonian v. Ashcroft*, 320 F.3d 1061, 1070 (9th Cir. 2003); see also

Damaize-Job v. INS, 787 F.2d 1332, 1336 (9th Cir. 1986) (no need to demonstrate countrywide persecution if persecutor shows no intent to limit his persecution to one area, and applicant can be readily identified).[1]

Because Singh was persecuted by the government, it is presumed that he is not safe anywhere in India, and that relocation would be unreasonable. The presumption has not been rebutted.

i. INS Did Not Rebut the Presumption of Nationwide Persecution of Mr. Singh by the Indian Government

The former INS (now Department of Homeland Security) may present evidence to rebut the presumption; otherwise, the applicant is eligible for asylum. *Surinder Singh v. Ilchert*, 69 F.3d 375, 380 (9th Cir. 1995). Because the INS did not rebut the presumption of countrywide persecution in India, Singh was fully eligible for asylum.

INS has the burden of establishing that the national government does not have the ability to persecute its citizens on a countrywide basis. *Harpinder Singh v. Ilchert*, 63 F.3d 1501, 1512 (9th Cir. 1995). Harpinder Singh was a Sikh who fled India after being tortured by the police for being suspected of being a separatist Sikh militant. The Ninth Circuit held that the BIA had erred in requiring Harpinder

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[1] An asylum applicant does not need to establish nationwide persecution upon return to his country, but the grant of asylum is discretionary with the Attorney General, and the national scope of the persecution is an important discretionary factor. 8 CFR 208.13(b)(1)(i)(B).

Singh to show a threat of country-wide persecution for asylum and withholding of deportation. *Id.* at 1510. The court found that there was no burden on Singh to show that his past experience reflected countrywide conditions, and that "[t]he fear of being persecuted need not extend to the *whole* territory of the refugee's country of nationality." *Id.* at 1511.

Here, the INS argued that Singh was able to live peacefully in another part of India, Gujarat, for four years. However, during 1999, four policemen, two wearing Punjabi Police uniforms, came looking for Singh at his Gujurat home. It was fortuitous that Singh was not home at the time. This incident prompted Singh to flee Gujarat and India, fearing for his life. In Gujarat, Singh was a three-days drive from Punjab, and yet he was still located by the police. The fact that it was an "uneventful visit" as the panel characterized it in the Memorandum Opinion is irrelevant. In the past, similar "visits" by the police had resulted in arrest, detention, and torture. Visits were "uneventful" only if the police did not find Singh.

Furthermore, the INS has presented no evidence regarding the Indian government to rebut the presumption that "a police force controlled by the national government... would be capable of locating petitioner in other regions of India." *Singh v. Ilchert*, 801 F. Supp. 313 (N.D. Cal. 1992).

Ultimately, there are no safe places within a nation for an asylum seeker when it is the national government that has driven the individual to leave the country. INA § 208. Although the Memorandum Opinion points to the improved situation of Sikhs in India, the ability of thousands of Sikhs to live peacefully in some parts of India does not have a bearing on petitioner's claim that he, as a *particular* Sikh, had been persecuted for his opinions (emphasis added) *see Singh v.*

Moschorak, 53 F.3d 1031 (1995). In *Singh*, petitioner was a Sikh that had been residing in Punjab, India. For his membership in a Sikh student group, he was threatened with death and tortured for days. The Ninth Circuit held that although other Sikhs were safely residing in India, since the government had persecuted this individual, it was improper to assume that he would be safe in India. *See id* at 1034. Accordingly, it is improper to conclude that Singh will be free from persecution in India just because other Sikhs are living peacefully there.

ii. It is Unreasonable for Singh to Relocate Within India Because He Would Still be Subject to Persecution by the Government

Although it may be possible for an asylum applicant to relocate internally within his country, this is not sufficient for a denial of asylum. *Melkonian v. Ashcroft*, 320 F.3d 1061 (9th Cir. 2003). Because Singh's persecution occurred at the hands of the government, a presumption arises that the threat is nationwide and that internal relocation is unreasonable. *Id.* Factors to consider in determining reasonableness include whether the applicant would face serious harm in the new location, economic infrastructure, geographical limitations, social and cultural constraints, and whether the applicant would be placed in unpredictable situations (citations omitted). *See id.* Internal relocation would place Singh into a precarious position that would compromise his religious and social freedoms and undoubtedly lead to further persecution by the Indian government. Under such circumstances, it is unreasonable to expect him to relocate within India.

In light of these factors, it is unreasonable to expect Sikh to return to India to live safely. Singh's ability to avoid further persecution by attempting to relocate rather

inconspicuously may be undermined by his religious dress and his inability to speak the languages of other regions of India. *See Singh*, 801 F. Supp. at 321. For example, even as an inactive Sikh in Gujurat, Singh still proved to be an easy target for the police. In India, Singh will continue to be associated with the Babbar Khalsa religious Sikh organization to his great peril.

In addition, Singh's family and friends reside in the Punjab region, and that is his true home in India. However, Singh has started to build a life for himself in the United States. If he were to return to live in a foreign part of India, Singh would be displaced in his own country. Moreover, he would be forced to lead a quiet existence, practicing his religion extremely cautiously, as there have been Hindu-Muslim clashes of violence while Singh was living in Gujurat in the late 1990's and also more recently.

Furthermore, the United Nations High Commissioner for Refugees would not even consider internal relocation where the risk of persecution stems from a government body. UNHCR Guidelines on International Protection (2003). In other words, where a national authority such as a centralized police force are the persecutors, there is a presumption that relocation would be futile since the national police force can exercise authority in all parts of the country. *Id.* Because Singh suffered at the hands of the Indian government, internal relocation would be per se unreasonable under the UNHCR Guidelines.

CONCLUSION

The Court should grant the petition for writ of certiorari and reverse the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 03-70215

Agency No. A77-800-843

[Filed August 26, 2004]

KESAR SINGH,
Petitioner,

v.

JOHN ASHCROFT, Attorney General,
Respondent.

ORDER

Before: D.W. NELSON, GIBSON,* and GRABER, Circuit Judges.

* The Honorable John R. Gibson, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation.

Judge Graber has voted to deny the petition for rehearing en banc, and Judges D.W. Nelson and John R. Gibson have so recommended. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it.

The petition for rehearing en banc is DENIED.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 03-70215

June 7, 2004, Argued and Submitted, Pasadena, California
June 18, 2004, Filed

KESAR SINGH,
Petitioner,

v.

JOHN ASHCROFT, Attorney General,
Respondent.

JUDGES: Before: D.W. NELSON, GIBSON,** and GRABER, Circuit Judges.

** The Honorable John R. Gibson, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation.

OPINION

MEMORANDUM*

Petitioner Kesar Singh, a native of India, petitions for review from an order of the Board of Immigration Appeals affirming, without opinion, the order of an immigration judge (IJ) denying his applications for asylum, withholding of deportation, and relief under the Convention Against Torture.

1. We assume but need not decide that the IJ's adverse credibility finding was not supported by substantial evidence. The IJ found, in the alternative, that even if Petitioner were credible, he could relocate safely in the Gujarat province of India. See *Melkonian v. Ashcroft*, 320 F.3d 1061, 1069 (9th Cir. 2003) (holding that asylum may be denied to an applicant who has otherwise demonstrated a well-founded fear of future persecution if the evidence shows that internal relocation is a reasonable option in all the circumstances); 8 C.F.R. § 208.13(b)(1)(i)(B).

The IJ's alternative finding is supported by substantial evidence in the record. For example, Petitioner in fact relocated to the Gujarat province, where he lived for four years without incident. He was not threatened or harmed after relocating. Although (accepting Petitioner's testimony as true). Punjabi police came to his house shortly before he left the country in 1999, they did not harm or threaten Petitioner in any way; he merely speculated vaguely about--but did not know--the reason for their single, uneventful visit.

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* This disposition is not appropriate for publication and may not be cited to or by courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Additionally, the State Department Country Reports for 1996 through 2000 show that the situation of Sikhs, even in the Punjab province, had improved considerably. See *Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002) (stating that such reports are relevant even in the face of a presumption of future persecution); see also *Gonzalez-Hernandez v. Ashcroft*, 336 F.3d 995, 999 (9th Cir. 2003) (finding a country report relevant to determining the reasonableness of internal relocation).

2. Because Petitioner failed to meet the eligibility standard for asylum, he necessarily failed to meet the more stringent standard for withholding of deportation. *Astrero v. INS*, 104 F.3d 264, 266 (9th Cir 1996).

3. Petitioner failed to establish that it is more likely than not that he would be tortured if removed to India. 8 C.F.R. § 208.16(c)(2).

PETITION DENIED.

APPENDIX C

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: **A77-800-843** - Los Angeles

Date: 12/19/02

In re: SINGH, KESAR

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: CURTIS-DIOP, VALERIE

ORDER

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

/s/ _____
Patricia Cole

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

Los Angeles, California

File No.: A-77- 800- 843

Date: March 1, 2001

In the Matter of KESAR SINGH,
Respondent

IN REMOVAL PROCEEDINGS

CHARGE: Violation of Section 212(a) (6) (A) (i) - entering the United States without permission.

APPLICATIONS: Political asylum, withholding of removal, and relief under the Convention Against Torture.

ON BEHALF OF RESPONDENT:

Valerie Curtis-Diop, Esq.
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ON BEHALF OF SERVICE:

Rodin Rooyani, Esq.

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 28-year-old gentleman, native and citizen of India who arrived in the United States near Brownsville, Texas on July 12, 1999 without being admitted, paroled, or inspected by an Immigration Officer. At a Master Calendar hearing held before this Immigration Judge on October 8, 1999, the respondent admitted the factual allegations contained in the charging document, conceded the charge of removability, and on that basis I find him to be deportable by clear, convincing, and unequivocal evidence and removable as well. For relief he has asked for political asylum, withholding of removal, and relief under The Convention Against Torture.

In order to establish eligibility for political asylum under Section 208 of the Act, the applicant must show that he is unable or unwilling to return to India because of a well-founded fear of persecution or because of persecution, itself, on account of race, religion, nationality, membership in a particular social group, or political opinion.

With regard to withholding of removal, respondent must show that it is more likely than not that he would be subjected to persecution on account of one of those five grounds. With regard to relief under The Convention Against Torture, the respondent must show that it is more likely than not that he would be subjected to either physical or mental abuse by the government or another group whose actions the government acquiesces in.

The respondent was born in the Punjab region of India. He is a Sikh. He went to college in the 1990s add received, ultimately, a diploma in mechanical engineering. The respondent throughout the entire morning stated, specifically, that he was not a member of a political party, but a religious party called Babbar Khalsa. The respondent was affiliated with that organization in 1992 and, apparently, became a full-fledged member in 1994. The respondent said that his goal was to inform others about the Sikh religion, and, in fact, that is what he did with students while he was in college.

The first of two incidents for which the respondent bases his claim occurred in November of 1994. The respondent said that there was a function at the college and he, himself, was informing students about the Sikh religion by giving a speech. He said after the speech the police arrested him and they took him to a police station with two other students. He was kept overnight, he was questioned, and he was beaten with straps of leather on his back. He was asked about other members of the group, and the respondent said, "Nothing." He had been interrogated for a 40 minute period. Apparently, in the morning a group of college students protested loudly outside the police station. The dean and president of the college spoke to the jailers, and the respondent was released.

The next incident happened in November or December of 1995 a year later. The respondent a few months after graduation was grabbed at his home by the police. Four police officers came, arrested the respondent, did not ask him a question, put him in the jeep, and in a cell by himself. When the man who was in charge of the station came and asked him what his name was, the officer then, apparently, proceeded to verbally abuse the respondent. He was asked which organization he was related to. The respondent replied none. He said that he was so scared that he lied to the police because

in those days "they were picking up Sikhs." The respondent then proceeded to explain how he had his hands tied behind him, they ripped his shirt, spread his legs, and continued interrogating him for between one to three hours. After sixteen hours of custody, the respondent was blindfolded, taken in a jeep to the "forest." When they took the blindfold off, the respondent noticed that he was with two other men who were dressed similarly to the respondent. He was also there with four police officers. Respondent had said that the police officers started unloading them off of the jeep vehicle and asked he and the other two civilians to start running.

During the midnight hour, after having his legs aching because of the treatment he received, the respondent stated that in the darkness he ran for approximately 75 yards before he fell down into a ditch. Apparently, the police officers had rifles and they were spraying bullets back and forth across the darkness where the respondent and the two other civilians were running. He said, specifically, that the jeep was facing the other way; that there were no lights, but that for some reason in the forest they could see in the darkness. By the grace of God he was not hurt.

The respondent then continued on his route, I do not know whether he was running or not, but for four hours. He came upon a village road where he was picked up by a buffalo truck. He went home, woke his family, and they suggested he leave. He went to the State of Gujarat where he stayed with a friend. He lived without incident for four years there; worked in a factory until one day in 1999 the police came to his home while he was at work. The neighbors noticed that there were four officers, two Punjabi officers, two Gujarati officers. They were looking for the respondent. The respondent then went to a travel agent and eventually boarded a plane for Costa Rica winding his way through South America to the United States.

Respondent now firmly believes that he will be killed if he is to return because he is a Sikh who is active in the preaching of the Sikh doctrines.

With regard to the credibility of the respondent, it has been quite difficult to get information from him. He has shown some signs of evasiveness, asking to repeat information that was pertinent, although he seems to have generally understood the proceedings. I have seen no inconsistency between his 1-589, which is very brief, and his testimony. There is a degree of implausibility to the event in the forest. I find that event as described to be somewhat incredible as it is implausible that someone who has been injured and could not run could proceed in a dark forest for 75 feet while four men were spraying bullets in the darkness and not get hurt. I believe that if the police had really wanted to kill them, they sure could have just shot them while they were blindfolded and standing next to the jeep. So I do not agree with the description of that event as the respondent has described it.

Assuming for the balance of the discussion that the claim is true, then the question remains as to whether or not the respondent has made a claim for asylum and withholding. It must be pointed out that the respondent has proffered no information except State Department generated reports. There is no report from Amnesty International, and no report from any independent Sikh newspaper. The reports are clear that the police act without regard to the liberty of many of their targets. The reports of Exhibit 3 and Exhibit 4, 1999 and 1997, respectively, point that out.

The respondent, however, has not competently expressed a claim as to why the government would have any need or desire to persecute him. The respondent himself says that his group was not political although some of the reports quibble

that it is a terrorist group. But assuming that the respondent was not part of a terrorist organization, according to his own testimony, the only thing that he did was preach at a school organization. He bases his claim on this one event. The officials at the school managed to get him released, and the police did not contact him for an entire year. Then, they arrest him in an event that I really do not believe happened as described by the respondent, and then he relocated elsewhere in the country safely for four years. Then, he was visited hy four police that the respondent believes were looking for him. They may have been looking for him, but for what reason I have no clue nor does the respondent actually. There is absolutely no corroborating evidence. There is absolutely no reason to know that the police, in fact, traveled all the way to the Punjab after four years to look for the respondent for an event that had happened where they voluntarily released him and did not bother him for a year. All of this does not have an internal logic that I believe would support the 1-589. Therefore, even if credible, I do not believe that it is more likely than not that the respondent would suffer any harm if he were to return. I believe he could live safely in the Gujarat Province if not the Punjab State. I think the respondent has not credibly shown that he has suffered persecution to the degree that would support asylum; especially, since he successfully relocated in this country for four years prior to his departure. It should be pointed out also that respondent's father belongs to the Akali Dal and has not suffered, and that is, in fact, a politically active group in the Punjab. I think there is more to the story than what the Court has heard with regard to the respondent's activities. I do point out that the report at Exhibit 4, even though it is a 1997 report, states, especially at question 59, that there is a high level of misrepresentation in claims by Sikhs, and question 60 in 1994 shows that every asylum case investigated in a six month period involved fraudulent claims. Therefore, the Court is at a high degree of

alert to these claims and looks for a degree of corroboration either by documentation or by corroborating evidence or testimony.

For all of the above reasons, I find that the respondent has fallen short, and the following orders will issue:

ORDERS

IT IS HEREBY ORDERED that the respondent's application for Convention Against Torture relief is denied.

IT IS FURTHER ORDERED that the respondent's application for both withholding of removal and political asylum are denied, and he is hereby ordered removed from the United States to India.

IT IS SO ORDERED.

/s/ _____
RICHARD D. WALTON
U.S. Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE RICHARD D. WALTON, in the matter of:

KESAR SINGH

A 77 8O0 849

Los Angeles, California

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ _____

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July 1, 2001
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies that a Sony BEC/T-147, 4-channel transcriber or equivalent, as described in Section C, paragraph C.3.3.2 of the contract, was used to transcribe the Record of Proceeding shown in the above paragraph.